

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** Galveston

**FILE NUMBER:** I-5285

**PROJECT LOCATION INFORMATION:**

State: Texas

County: Trinity

Center coordinates of site (latitude/longitude): Lat: 30-56-57.2283 N Long: 95-18-22.1980 W

Approximate size of area (parcel) reviewed, including uplands: 1 acres.

Name of nearest waterway: Lake Livingston

Name of watershed: Trinity River

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination



Date: 5 December 2005

Site visit(s)



Date(s): 10 January 2006

**Jurisdictional Determination (JD):**

☒ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☐ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:

☒ *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 1 acre.

☒ *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 1 acre.

☒ *There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.



Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

☒ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.

☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.

☒ (4) Impoundments of waters otherwise defined as waters of the US.

☒ (5) The presence of a tributary to a water identified in (1) - (4) above.

☒ (6) The presence of territorial seas.

☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination.* Project site is in Lake Livingston, which an impoundment of the Trinity River, a navigable water of the U.S. There are wetlands contiguous to Lake Livingston present.

FILE NUMBER: I-5285

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- ☒ Ordinary High Water Mark indicated by:
- ☒ clear, natural line impressed on the bank
  - ☒ the presence of litter and debris
  - ☐ changes in the character of soil
  - ☐ destruction of terrestrial vegetation
  - ☐ shelving
  - ☐ other:
- ☒ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☐ tidal gages
  - ☐ other:

- ☒ Mean High Water Mark indicated by:
- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.

- ☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- ☒ The reviewed area consists entirely of uplands.
- ☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
  - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - ☐ Other (explain):

**DATA REVIEWED FOR JURSDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☐ This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):
  - ☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☒ Data sheets prepared by the Corps.
- ☒ Corps' navigable waters' studies:
- ☒ U.S. Geological Survey Hydrologic Atlas:
  - ☒ U.S. Geological Survey 7.5 Minute Topographic maps: Trinity East, Tex. 1960 Photorevised 1972
  - ☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
  - ☒ U.S. Geological Survey 15 Minute Historic quadrangles:
  - ☒ USDA Natural Resources Conservation Service Soil Survey:
  - ☒ National wetlands inventory maps:
  - ☒ State/Local wetland inventory maps:
  - ☒ FEMA/FIRM maps (Map Name & Date):
  - ☒ 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
  - ☒ Aerial Photographs (Name & Date):
  - ☒ Other photographs (Date): Site photos taken on 10 and 26 January 2006
  - ☒ Advanced Identification Wetland maps:
  - ☒ Site visit/determination conducted on: 10 January 2005
  - ☒ Applicable/supporting case law:
  - ☒ Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** CESWG  
**FILE NUMBER:** 24081 & D-18388

**PROJECT LOCATION INFORMATION:**

State: Texas  
County: Aransas  
Center coordinates of site (latitude/longitude): 28.02N / 97.15W  
Approximate size of area (parcel) reviewed, including uplands: 0.2 acres.  
Name of nearest waterway: Port Bay  
Name of watershed: Aransas Bay

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination ☒ Date:  
Site visit(s) ☒ Date(s): 15 Mar 2006

**Jurisdictional Determination (JD):**

- ☒ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☐ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).
- ☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:
- ☒ *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .
- ☒ *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .
- ☒ *There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.  
☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

- ☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

- ☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- ☒ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.
- ☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
- ☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.
- ☒ (4) Impoundments of waters otherwise defined as waters of the US.
- ☒ (5) The presence of a tributary to a water identified in (1) – (4) above.
- ☒ (6) The presence of territorial seas.
- ☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:*

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- ☒ Ordinary High Water Mark indicated by:
- ☒ clear, natural line impressed on the bank
  - ☐ the presence of litter and debris
  - ☐ changes in the character of soil
  - ☐ destruction of terrestrial vegetation
  - ☐ shelving
  - ☐ other:
- ☒ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
  - ☒ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☐ tidal gages
  - ☐ other:

☒ Mean High Water Mark indicated by:

- ☐ survey to available datum; ☒ physical markings; ☐ vegetation lines/changes in vegetation types.

☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- ☒ The reviewed area consists entirely of uplands.
- ☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
  - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - ☐ Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☐ This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☒ Data sheets prepared by the Corps.
- ☒ Corps' navigable waters' studies:
- ☒ U.S. Geological Survey Hydrologic Atlas:
- ☒ U.S. Geological Survey 7.5 Minute Topographic maps: BAYSIDE, Texas
- ☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
- ☒ U.S. Geological Survey 15 Minute Historic quadrangles:
- ☒ USDA Natural Resources Conservation Service Soil Survey:
- ☒ National wetlands inventory maps:
- ☒ State/Local wetland inventory maps:
- ☒ FEMA/FIRM maps (Map Name & Date):
- ☒ 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
- ☒ Aerial Photographs (Name & Date): NAIP, 2004
- ☒ Other photographs (Date): Provided by applicant, taken August 5, 2005
- ☒ Advanced Identification Wetland maps:
- ☒ Site visit/determination conducted on:
- ☒ Applicable/supporting case law:
- ☒ Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** Galveston  
**FILE NUMBER:** 14392(05)/2008

**PROJECT LOCATION INFORMATION:**

State: Texas  
County: Kleberg  
Center coordinates of site (latitude/longitude): 27.31N / 97.67W  
Approximate size of area (parcel) reviewed, including uplands: 0.1 acres.  
Name of nearest waterway: Cayo del Grullo  
Name of watershed: Baffin Bay

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination ☒ Date: 28 Mar 2006  
Site visit(s) ☐ Date(s):

**Jurisdictional Determination (JD):**

- ☐ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☐ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).
- ☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:
- ☒ *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .
- ☐ *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .
- ☐ *There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.  
☐ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

- ☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

- ☐ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- ☐ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.
- ☐ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
- ☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.
- ☐ (4) Impoundments of waters otherwise defined as waters of the US.
- ☐ (5) The presence of a tributary to a water identified in (1) - (4) above.
- ☐ (6) The presence of territorial seas.
- ☐ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:*

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- ☒ Ordinary High Water Mark indicated by:
- ☒ clear, natural line impressed on the bank
  - ☐ the presence of litter and debris
  - ☐ changes in the character of soil
  - ☐ destruction of terrestrial vegetation
  - ☐ shelving
  - ☐ other:
- ☒ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☒ physical markings/characteristics
  - ☐ tidal gages
  - ☐ other:

- ☒ Mean High Water Mark indicated by:
- ☐ survey to available datum; ☒ physical markings; ☐ vegetation lines/changes in vegetation types.

- ☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- ☒ The reviewed area consists entirely of uplands.
- ☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
  - ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
  - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - ☐ Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
  - ☐ This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):
  - ☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☒ Data sheets prepared by the Corps.
- ☒ Corps' navigable waters' studies:
- ☒ U.S. Geological Survey Hydrologic Atlas:
- ☒ U.S. Geological Survey 7.5 Minute Topographic maps: RIVIERA BEACH, Texas
- ☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
- ☒ U.S. Geological Survey 15 Minute Historic quadrangles:
- ☒ USDA Natural Resources Conservation Service Soil Survey:
- ☒ National wetlands inventory maps:
- ☒ State/Local wetland inventory maps:
- ☒ FEMA/FIRM maps (Map Name & Date):
- ☒ 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
- ☒ Aerial Photographs (Name & Date): GLO, 2002
- ☒ Other photographs (Date):
- ☒ Advanced Identification Wetland maps:
- ☒ Site visit/determination conducted on:
- ☒ Applicable/supporting case law:
- ☒ Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** CESWG-PE-RC  
**FILE NUMBER:** D-18225

**PROJECT LOCATION INFORMATION:**

State: TX  
County: Fort Bend  
Center coordinates of site (latitude/longitude): 29° 33.62'N, 95° 31.18'W (NAD27)  
Approximate size of area (parcel) reviewed, including uplands: acres.  
Name of nearest waterway: Oyster Creek or Mustang Bayou  
Name of watershed:

**JURISDICTIONAL DETERMINATION**

Completed: Desktop determination ☒ Date: 05/18/06 4/23/06  
Site visit(s) ☒ Date(s):

**Jurisdictional Determination (JD):**

☒ Preliminary JD - Based on available information, ☐ there appear to be (or) ☐ there appear to be no "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:

☒ There are "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

☒ There are "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

☒ There are "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.

☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

☒ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.

☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.

☒ (4) Impoundments of waters otherwise defined as waters of the US.

☒ (5) The presence of a tributary to a water identified in (1) - (4) above.

☒ (6) The presence of territorial seas.

☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:* Oyster Creek and Musang Bayou are surface tributary systems and water of the United States.

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- ☒ Ordinary High Water Mark indicated by:
- ☐ clear, natural line impressed on the bank
  - ☐ the presence of litter and debris
  - ☐ changes in the character of soil
  - ☐ destruction of terrestrial vegetation
  - ☐ shelving
  - ☐ other:
- ☒ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☐ tidal gages
  - ☐ other:

- ☒ Mean High Water Mark indicated by:
- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.

- ☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- ☒ The reviewed area consists entirely of uplands.
- ☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
  - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - ☐ Other (explain):

**DATA REVIEWED FOR JURSDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☐ This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):
  - ☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☒ Data sheets prepared by the Corps.
- ☒ Corps' navigable waters' studies:
- ☒ U.S. Geological Survey Hydrologic Atlas:
  - ☒ U.S. Geological Survey 7.5 Minute Topographic maps:
  - ☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
  - ☒ U.S. Geological Survey 15 Minute Historic quadrangles:
  - ☒ USDA Natural Resources Conservation Service Soil Survey:
  - ☒ National wetlands inventory maps:
  - ☒ State/Local wetland inventory maps:
  - ☒ FEMA/FIRM maps (Map Name & Date):
  - ☒ 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
  - ☒ Aerial Photographs (Name & Date):
  - ☒ Other photographs (Date):
  - ☒ Advanced Identification Wetland maps:
  - ☒ Site visit/determination conducted on:
  - ☒ Applicable/supporting case law:
  - ☒ Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.



**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** CESWG-PE-RC  
**FILE NUMBER:** D-18226

**PROJECT LOCATION INFORMATION:**

State: TX  
County: Fort Bend  
Center coordinates of site (latitude/longitude): 29° 34' 01"N, 95° 31' 29"W (NAD27)  
Approximate size of area (parcel) reviewed, including uplands: acres.  
Name of nearest waterway: Mustang Bayou  
Name of watershed:

**JURISDICTIONAL DETERMINATION**

Completed: Desktop determination ☒ Date: 06/23/06  
Site visit(s) ☒ Date(s):

**Jurisdictional Determination (JD):**

☒ Preliminary JD - Based on available information, ☐ there appear to be (or) ☐ there appear to be no "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:

☒ There are "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

☒ There are "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

☒ There are "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.

☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

☒ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.

☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.

☒ (4) Impoundments of waters otherwise defined as waters of the US.

(5) The presence of a tributary to a water identified in (1) - (4) above.

(6) The presence of territorial seas.

☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:* Mustang Bayou is a surface tributary systems and water of the United States.

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- ☒ Ordinary High Water Mark indicated by:
- ☐ clear, natural line impressed on the bank
  - ☐ the presence of litter and debris
  - ☐ changes in the character of soil
  - ☐ destruction of terrestrial vegetation
  - ☐ shelving
  - ☐ other:
- ☒ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☐ tidal gages
  - ☐ other:

☒ Mean High Water Mark indicated by:

- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.

☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:**Basis For Not Asserting Jurisdiction:**

- ☒ The reviewed area consists entirely of uplands.
- ☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
  - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - ☐ Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☐ This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☒ Data sheets prepared by the Corps.
- ☒ Corps' navigable waters' studies:
- ☒ U.S. Geological Survey Hydrologic Atlas:
- ☒ U.S. Geological Survey 7.5 Minute Topographic maps:
- ☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
- ☒ U.S. Geological Survey 15 Minute Historic quadrangles:
- ☒ USDA Natural Resources Conservation Service Soil Survey:
- ☒ National wetlands inventory maps:
- ☒ State/Local wetland inventory maps:
- ☒ FEMA/FIRM maps (Map Name & Date):
- ☒ 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
- ☒ Aerial Photographs (Name & Date):
- ☒ Other photographs (Date):
- ☒ Advanced Identification Wetland maps:
- ☒ Site visit/determination conducted on:
- ☒ Applicable/supporting case law:
- ☒ Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** CESWG-PE-RC  
**FILE NUMBER:** D-18227

**PROJECT LOCATION INFORMATION:**

State: TX  
County: Fort Bend  
Center coordinates of site (latitude/longitude): 29° 34.54'N, 95° 31.51'W (NAD27)  
Approximate size of area (parcel) reviewed, including uplands: acres.  
Name of nearest waterway: Mustang Bayou  
Name of watershed:

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination ☒ Date: 06/24/06  
Site visit(s) ☒ Date(s):

**Jurisdictional Determination (JD):**

☒ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☐ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:

☒ *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

☒ *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

☒ *There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.

☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

☒ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.

☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.

☒ (4) Impoundments of waters otherwise defined as waters of the US.

☒ (5) The presence of a tributary to a water identified in (1) - (4) above.

☒ (6) The presence of territorial seas.

☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:* Mustang Bayou is a surface tributary systems and water of the United States.

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- ☒ Ordinary High Water Mark indicated by:
- ☐ clear, natural line impressed on the bank
  - ☐ the presence of litter and debris
  - ☐ changes in the character of soil
  - ☐ destruction of terrestrial vegetation
  - ☐ shelving
  - ☐ other:
- ☒ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☐ tidal gages
  - ☐ other:
- ☒ Mean High Water Mark indicated by:
- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.
- ☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- ☒ The reviewed area consists entirely of uplands.
- ☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
  - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - ☐ Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☐ This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):
  - ☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☒ Data sheets prepared by the Corps.
- ☒ Corps' navigable waters' studies:
- ☒ U.S. Geological Survey Hydrologic Atlas:
  - ☒ U.S. Geological Survey 7.5 Minute Topographic maps:
  - ☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
  - ☒ U.S. Geological Survey 15 Minute Historic quadrangles:
  - ☒ USDA Natural Resources Conservation Service Soil Survey:
  - ☒ National wetlands inventory maps:
  - ☒ State/Local wetland inventory maps:
  - ☒ FEMA/FIRM maps (Map Name & Date):
  - ☒ 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
  - ☒ Aerial Photographs (Name & Date):
  - ☒ Other photographs (Date):
  - ☒ Advanced Identification Wetland maps:
  - ☒ Site visit/determination conducted on:
  - ☒ Applicable/supporting case law:
  - ☒ Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** CESWG-PE-RC  
**FILE NUMBER:** D-18228

**PROJECT LOCATION INFORMATION:**

State: TX  
County: Fort Bend  
Center coordinates of site (latitude/longitude): 29° 32' 43"N, 95° 31' 50"W (NAD27)  
Approximate size of area (parcel) reviewed, including uplands: acres.  
Name of nearest waterway: Oyster Creek  
Name of watershed:

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination ☒ Date: 06/24/06  
Site visit(s) ☒ Date(s):

**Jurisdictional Determination (JD):**

- ☒ Preliminary JD - Based on available information, ☐ there appear to be (or) ☐ there appear to be no "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).
- ☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:
- ☒ There are "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:
- ☒ There are "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:
- ☒ There are "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.  
☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

- A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**
- ☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
- B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**
- ☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- ☒ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.
- ☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
- ☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.
- ☒ (4) Impoundments of waters otherwise defined as waters of the US.
- ☒ (5) The presence of a tributary to a water identified in (1) - (4) above.
- ☒ (6) The presence of territorial seas.
- ☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:* Oyster Creek is a surface tributary system and a water of the United States. There are wetlands around Kitty Hollow Lake and Oyster Creek within the project area PLUS Kitty Hollow Lake is a surface tributary of Oyster Creek

FILE NUMBER: D-18228

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- ☒ Ordinary High Water Mark indicated by:
- ☐ clear, natural line impressed on the bank
  - ☐ the presence of litter and debris
  - ☐ changes in the character of soil
  - ☐ destruction of terrestrial vegetation
  - ☐ shelving
  - ☐ other:
- ☒ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☐ tidal gages
  - ☐ other:

☒ Mean High Water Mark indicated by:

- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.

☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:**Basis For Not Asserting Jurisdiction:**

- ☒ The reviewed area consists entirely of uplands.
- ☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
  - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - ☐ Other (explain):

**DATA REVIEWED FOR JURSDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☐ This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☒ Data sheets prepared by the Corps.
- ☒ Corps' navigable waters' studies:
- ☒ U.S. Geological Survey Hydrologic Atlas:
- ☒ U.S. Geological Survey 7.5 Minute Topographic maps:
- ☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
- ☒ U.S. Geological Survey 15 Minute Historic quadrangles:
- ☒ USDA Natural Resources Conservation Service Soil Survey:
- ☒ National wetlands inventory maps:
- ☒ State/Local wetland inventory maps:
- ☒ FEMA/FIRM maps (Map Name & Date):
- ☒ 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
- ☒ Aerial Photographs (Name & Date):
- ☒ Other photographs (Date):
- ☒ Advanced Identification Wetland maps:
- ☒ Site visit/determination conducted on:
- ☒ Applicable/supporting case law:
- ☒ Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** CESWG-PE-RC  
**FILE NUMBER:** D-18229

**PROJECT LOCATION INFORMATION:**

State: TX  
County: Fort Bend  
Center coordinates of site (latitude/longitude): 29° 31' 29"N, 95° 31' 30"W (NAD27)  
Approximate size of area (parcel) reviewed, including uplands: acres.  
Name of nearest waterway: Oyster Creek  
Name of watershed:

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination ☒ Date: 06/24/06  
Site visit(s) ☒ Date(s):

**Jurisdictional Determination (JD):**

☒ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☐ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:

☒ *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

☒ *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

☒ *There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.

☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

☒ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.

☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.

☒ (4) Impoundments of waters otherwise defined as waters of the US.

☒ (5) The presence of a tributary to a water identified in (1) - (4) above.

☒ (6) The presence of territorial seas.

☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:* Oyster Creek is a surface tributary system and a water of the United States.

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- ☒ Ordinary High Water Mark indicated by:
- ☐ clear, natural line impressed on the bank
  - ☐ the presence of litter and debris
  - ☐ changes in the character of soil
  - ☐ destruction of terrestrial vegetation
  - ☐ shelving
  - ☐ other:
- ☒ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☐ tidal gages
  - ☐ other:

☒ Mean High Water Mark indicated by:

- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.

☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:**Basis For Not Asserting Jurisdiction:**

- ☒ The reviewed area consists entirely of uplands.
- ☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
  - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - ☐ Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☐ This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☒ Data sheets prepared by the Corps.
- ☒ Corps' navigable waters' studies:
- ☒ U.S. Geological Survey Hydrologic Atlas:
- ☒ U.S. Geological Survey 7.5 Minute Topographic maps:
- ☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
- ☒ U.S. Geological Survey 15 Minute Historic quadrangles:
- ☒ USDA Natural Resources Conservation Service Soil Survey:
- ☒ National wetlands inventory maps:
- ☒ State/Local wetland inventory maps:
- ☒ FEMA/FIRM maps (Map Name & Date):
- ☒ 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
- ☒ Aerial Photographs (Name & Date):
- ☒ Other photographs (Date):
- ☒ Advanced Identification Wetland maps:
- ☒ Site visit/determination conducted on:
- ☒ Applicable/supporting case law:
- ☒ Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.



**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** CESWG-PE-RC  
**FILE NUMBER:** D-18509

**PROJECT LOCATION INFORMATION:**

State: Texas  
County: Harris County  
Center coordinates of site (latitude/longitude): 29° 45' 36"N, 95° 33' 48"W (NAD83)  
Approximate size of area (parcel) reviewed, including uplands: 4.02 acres.  
Name of nearest waterway: Buffalo Bayou  
Name of watershed: Buffalo-San Jacinto

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination  
Site visit(s)

☒ Date: 28 June 2006  
☒ Date(s): 27 June 2006

**Jurisdictional Determination (JD):**

- ☒ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☐ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).
- ☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:
- ☒ There are "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:       .
- ☒ There are "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: unknown.
- ☒ There are "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.  
☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

- ☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

- ☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- ☒ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.
- ☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
- ☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.
- ☒ (4) Impoundments of waters otherwise defined as waters of the US.
- ☒ (5) The presence of a tributary to a water identified in (1) - (4) above.
- ☒ (6) The presence of territorial seas.
- ☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:* The wetlands at the project site are adjacent to Buffalo Bayou. Buffalo Bayou, down stream from the project site, is part of the Houston Ship Channel, a navigable water of the United States.

FILE NUMBER: D-18509

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- ☒ Ordinary High Water Mark indicated by:
- ☐ clear, natural line impressed on the bank
  - ☐ the presence of litter and debris
  - ☐ changes in the character of soil
  - ☐ destruction of terrestrial vegetation
  - ☐ shelving
  - ☐ other:
- ☒ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☐ tidal gages
  - ☐ other:

☒ Mean High Water Mark indicated by:

- ☐ survey to available datum; ☒ physical markings; ☐ vegetation lines/changes in vegetation types.

- ☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:  
Exact wetland boundaries have not been delineated at this time

**Basis For Not Asserting Jurisdiction:**

- ☒ The reviewed area consists entirely of uplands.
- ☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
  - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - ☐ Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☐ This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☒ Data sheets prepared by the Corps.
- ☒ Corps' navigable waters' studies:
- ☒ U.S. Geological Survey Hydrologic Atlas:
- ☒ U.S. Geological Survey 7.5 Minute Topographic maps: 1995, 1982, 1970, and 1918 Hedwig Village, Texas U.S.G.S topographic quadrangles.
- ☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
- ☒ U.S. Geological Survey 15 Minute Historic quadrangles:
- ☒ USDA Natural Resources Conservation Service Soil Survey:
- ☒ National wetlands inventory maps:
- ☒ State/Local wetland inventory maps:
- ☒ FEMA/FIRM maps (Map Name & Date): Harris County, Texas –Panel 640 of 1135. Revised 06 November 1996.
- ☒ 100-year Floodplain Elevation is: (NGVD)
- ☒ Aerial Photographs (Name & Date): 2004 GLO aerial photograph Hedwig Village, Texas.
- ☒ Other photographs (Date):
- ☒ Advanced Identification Wetland maps:
- ☒ Site visit/determination conducted on: 27 June 2006
- ☒ Applicable/supporting case law:
- ☒ Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** Galveston  
**FILE NUMBER:** I-5334

**PROJECT LOCATION INFORMATION:**

State: Texas  
County: Tyler  
Center coordinates of site (latitude/longitude): Lat: 30-37-30.1287 N Long: 94-25-21.4300 W  
Approximate size of area (parcel) reviewed, including uplands: 3.75 acres.  
Name of nearest waterway: Unnamed tributary to Black Creek  
Name of watershed: Neches River

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination ☒ Date: 29 June 2006  
Site visit(s) ☒ Date(s):

**Jurisdictional Determination (JD):**

☒ Preliminary JD - Based on available information, ☐ there appear to be (or) ☐ there appear to be no "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:

☒ There are "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

☒ There are "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

☒ There are "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.

☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

- ☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- ☒ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.
- ☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
- ☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.
- ☒ (4) Impoundments of waters otherwise defined as waters of the US.
- ☒ (5) The presence of a tributary to a water identified in (1) - (4) above.
- ☒ (6) The presence of territorial seas.
- ☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:*

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- ☒ Ordinary High Water Mark indicated by:
- ☐ clear, natural line impressed on the bank
  - ☐ the presence of litter and debris
  - ☐ changes in the character of soil
  - ☐ destruction of terrestrial vegetation
  - ☐ shelving
  - ☐ other:
- ☒ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☐ tidal gages
  - ☐ other:

- ☒ Mean High Water Mark indicated by:
- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.

- ☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by: Preliminary JD, no wetland boundary verified.

**Basis For Not Asserting Jurisdiction:**

- ☒ The reviewed area consists entirely of uplands.
- ☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - ☒ Isolated, intrastate wetland with no nexus to interstate commerce.
  - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - ☐ Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☒ This office concurs with the delineation report, dated 9 April 2006, prepared by (company): Enercon Services, Inc.
- ☐ This office does not concur with the delineation report, dated , prepared by (company):
- ☒ Data sheets prepared by the Corps.
- ☒ Corps' navigable waters' studies:
- ☒ U.S. Geological Survey Hydrologic Atlas:
- ☒ U.S. Geological Survey 7.5 Minute Topographic maps: 1984 Hillister, Tex. and 1984 Warren, Tex.
- ☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
- ☒ U.S. Geological Survey 15 Minute Historic quadrangles:
- ☒ USDA Natural Resources Conservation Service Soil Survey:
- ☒ National wetlands inventory maps:
- ☒ State/Local wetland inventory maps:
- ☒ FEMA/FIRM maps (Map Name & Date): Tyler County Panel No. 4810340011A dated 8 November 1977
- ☒ 100-year Floodplain Elevation is: (NGVD)
- ☒ Aerial Photographs (Name & Date): 1995 Infrared Aerial
- ☒ Other photographs (Date): Site photos dated January 2006
- ☒ Advanced Identification Wetland maps:
- ☒ Site visit/determination conducted on:
- ☒ Applicable/supporting case law:
- ☒ Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** CESWG  
**FILE NUMBER:** 14392(06)2039

**PROJECT LOCATION INFORMATION:**

State: TX  
County: Aransas  
Center coordinates of site (latitude/longitude): N28.07425 W97.10441  
Approximate size of area (parcel) reviewed, including uplands: 0.07 acres.  
Name of nearest waterway: Copano Bay  
Name of watershed: Copnao Bay

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination ☒ Date: 7/5/06  
Site visit(s) ☒ Date(s):

**Jurisdictional Determination (JD):**

- ☒ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☐ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).
- ☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:
- ☒ *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 0.02 acres.
- ☒ *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .
- ☒ *There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.  
☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

- ☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

- ☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- ☒ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.
- ☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
- ☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.
- ☒ (4) Impoundments of waters otherwise defined as waters of the US.
- ☒ (5) The presence of a tributary to a water identified in (1) - (4) above.
- ☒ (6) The presence of territorial seas.
- ☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:*

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- ☒ Ordinary High Water Mark indicated by:
- ☐ clear, natural line impressed on the bank
  - ☐ the presence of litter and debris
  - ☐ changes in the character of soil
  - ☐ destruction of terrestrial vegetation
  - ☐ shelving
  - ☐ other:
- ☒ High Tide Line indicated by:
- ☒ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☒ tidal gages
  - ☐ other:
- ☒ Mean High Water Mark indicated by:
- ☒ survey to available datum; ☒ physical markings; ☐ vegetation lines/changes in vegetation types.
- ☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- ☒ The reviewed area consists entirely of uplands.
- ☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
  - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - ☐ Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☐ This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):
  - ☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☒ Data sheets prepared by the Corps.
- ☒ Corps' navigable waters' studies:
- ☒ U.S. Geological Survey Hydrologic Atlas:
  - ☒ U.S. Geological Survey 7.5 Minute Topographic maps: Rockport, TX
  - ☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
  - ☒ U.S. Geological Survey 15 Minute Historic quadrangles:
  - ☒ USDA Natural Resources Conservation Service Soil Survey:
  - ☒ National wetlands inventory maps: Rockport, TX
  - ☒ State/Local wetland inventory maps:
  - ☒ FEMA/FIRM maps (Map Name & Date):
  - ☒ 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
  - ☒ Aerial Photographs (Name & Date): GLO 2002
  - ☒ Other photographs (Date):
  - ☒ Advanced Identification Wetland maps:
  - ☒ Site visit/determination conducted on:
  - ☒ Applicable/supporting case law:
  - ☒ Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** CESWG  
**FILE NUMBER:** 24185

**PROJECT LOCATION INFORMATION:**

State: Texas  
County: Cameron  
Center coordinates of site (latitude/longitude): 26.32N / 97.45W  
Approximate size of area (parcel) reviewed, including uplands: 0.1 acres.  
Name of nearest waterway: Arroyo Colorado  
Name of watershed: South Laguna Madre

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination ☒ Date: 7 July 2006  
Site visit(s) ☒ Date(s):

**Jurisdictional Determination (JD):**

- ☒ Preliminary JD - Based on available information, ☐ there appear to be (or) ☐ there appear to be no "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).
- ☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:
- ☒ There are "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .
- ☒ There are "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .
- ☒ There are "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.  
☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

- A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**
- ☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
- B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**
- ☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- ☒ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.
- ☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
- ☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.
- ☒ (4) Impoundments of waters otherwise defined as waters of the US.
- ☒ (5) The presence of a tributary to a water identified in (1) - (4) above.
- ☒ (6) The presence of territorial seas.
- ☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:*

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- ☒ Ordinary High Water Mark indicated by:
- ☒ clear, natural line impressed on the bank
  - ☐ the presence of litter and debris
  - ☐ changes in the character of soil
  - ☐ destruction of terrestrial vegetation
  - ☐ shelving
  - ☐ other:
- ☒ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☐ tidal gages
  - ☐ other:

- ☒ Mean High Water Mark indicated by:
- ☐ survey to available datum; ☒ physical markings; ☐ vegetation lines/changes in vegetation types.

- ☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- ☒ The reviewed area consists entirely of uplands.
- ☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
  - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - ☐ Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☐ This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):
  - ☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☒ Data sheets prepared by the Corps.
- ☒ Corps' navigable waters' studies:
- ☒ U.S. Geological Survey Hydrologic Atlas:
- ☒ U.S. Geological Survey 7.5 Minute Topographic maps: LA LEONA, Texas
- ☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
- ☒ U.S. Geological Survey 15 Minute Historic quadrangles:
- ☒ USDA Natural Resources Conservation Service Soil Survey:
- ☒ National wetlands inventory maps:
- ☒ State/Local wetland inventory maps:
- ☒ FEMA/FIRM maps (Map Name & Date):
- ☒ 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
- ☒ Aerial Photographs (Name & Date): NAIP, 2004
- ☒ Other photographs (Date):
- ☒ Advanced Identification Wetland maps:
- ☒ Site visit/determination conducted on:
- ☒ Applicable/supporting case law:
- ☒ Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.



**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** Galveston  
**FILE NUMBER:** D-18473 Amd. 1

**PROJECT LOCATION INFORMATION:**

State: Texas  
County: Nueces and Aransas  
Center coordinates of site (latitude/longitude): 27.88N / 97.10W  
Approximate size of area (parcel) reviewed, including uplands: 32,000 acres.  
Name of nearest waterway: Redfish Bay  
Name of watershed: Redfish Bay

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination ☒ Date: 10 July 2006  
Site visit(s) ☒ Date(s):

**Jurisdictional Determination (JD):**

☐ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☐ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:

☒ *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .

☒ *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .

☒ *There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.  
☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

- ☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- ☒ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.
- ☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
- ☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.
- ☒ (4) Impoundments of waters otherwise defined as waters of the US.
- ☒ (5) The presence of a tributary to a water identified in (1) - (4) above.
- ☒ (6) The presence of territorial seas.
- ☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:*

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- ☒ Ordinary High Water Mark indicated by:
- ☐ clear, natural line impressed on the bank
  - ☐ the presence of litter and debris
  - ☐ changes in the character of soil
  - ☐ destruction of terrestrial vegetation
  - ☐ shelving
  - ☐ other:
- ☒ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☒ tidal gages
  - ☐ other:

- ☒ Mean High Water Mark indicated by:
- ☒ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.

- ☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- ☒ The reviewed area consists entirely of uplands.
- ☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
  - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - ☐ Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☐ This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☒ Data sheets prepared by the Corps.
- ☒ Corps' navigable waters' studies:
- ☒ U.S. Geological Survey Hydrologic Atlas:
- ☒ U.S. Geological Survey 7.5 Minute Topographic maps: PORT ARANSAS, Texas
- ☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
- ☒ U.S. Geological Survey 15 Minute Historic quadrangles:
- ☒ USDA Natural Resources Conservation Service Soil Survey:
- ☒ National wetlands inventory maps:
- ☒ State/Local wetland inventory maps:
- ☒ FEMA/FIRM maps (Map Name & Date):
- ☒ 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
- ☒ Aerial Photographs (Name & Date): GLO, 2002
- ☒ Other photographs (Date):
- ☒ Advanced Identification Wetland maps:
- ☒ Site visit/determination conducted on:
- ☒ Applicable/supporting case law:
- ☒ Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** CESWG-PE-RC  
**FILE NUMBER:** D-18467

**PROJECT LOCATION INFORMATION:**

State: Texas  
County: Trinity County  
Center coordinates of site (latitude/longitude): 30° 57' 13"N, 95° 19' 39"W (NAD83)  
Approximate size of area (parcel) reviewed, including uplands: 4.5 acres.  
Name of nearest waterway: Lake Livingston  
Name of watershed: Lower Trinity

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination  
Site visit(s)

Date: 10 July 2006

Date(s):

**Jurisdictional Determination (JD):**

☒ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☐ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:

☒ *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 3.0.

☒ *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 3.0.

☒ *There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.

☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

☒ (2) The presence of interstate waters including interstate wetlands.

☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.

☒ (4) Impoundments of waters otherwise defined as waters of the US.

(5) The presence of a tributary to a water identified in (1) - (4) above.

(6) The presence of territorial seas.

☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:* Lake Livingston is a navigable impoundment of the Trinity River.

FILE NUMBER: D-18467

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- ☒ Ordinary High Water Mark indicated by:
- ☐ clear, natural line impressed on the bank
  - ☐ the presence of litter and debris
  - ☐ changes in the character of soil
  - ☐ destruction of terrestrial vegetation
  - ☐ shelving
  - ☒ other: 131-MSL elevation is normal pool elevation
- ☒ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☐ tidal gages
  - ☐ other:

- ☒ Mean High Water Mark indicated by:
- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.

- ☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- ☒ The reviewed area consists entirely of uplands.
- ☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
  - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - ☐ Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☐ This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):
  - ☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☒ Data sheets prepared by the Corps.
- ☒ Corps' navigable waters' studies:
- ☒ U.S. Geological Survey Hydrologic Atlas:
  - ☒ U.S. Geological Survey 7.5 Minute Topographic maps: 1972 Trinity East, Tx.
  - ☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
  - ☒ U.S. Geological Survey 15 Minute Historic quadrangles:
  - ☒ USDA Natural Resources Conservation Service Soil Survey:
  - ☒ National wetlands inventory maps:
  - ☒ State/Local wetland inventory maps:
  - ☒ FEMA/FIRM maps (Map Name & Date):
  - ☒ 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
  - ☒ Aerial Photographs (Name & Date): 1995 and 2004 Trinity East, Tx. DOQQ
  - ☒ Other photographs (Date):
  - ☒ Advanced Identification Wetland maps:
  - ☒ Site visit/determination conducted on:
  - ☒ Applicable/supporting case law:
  - ☒ Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** Galveston District  
**FILE NUMBER:** 24245

**PROJECT LOCATION INFORMATION:**

State: Texas  
County: Cameron  
Center coordinates of site (latitude/longitude): 25-57-31.05 97-22-35.02  
Approximate size of area (parcel) reviewed, including uplands: 7 acres.  
Name of nearest waterway: Brownsville Ship Channel  
Name of watershed: Laguna Madre

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination ☒ Date: 11 July 2006  
Site visit(s) ☒ Date(s):

**Jurisdictional Determination (JD):**

- ☒ Preliminary JD - Based on available information, ☐ there appear to be (or) ☐ there appear to be no "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).
- ☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:
- ☒ There are "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 3.52 acre.
- ☒ There are "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 0.38 acre.
- ☒ There are "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.  
☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

- A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**
- ☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
- B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**
- ☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- ☒ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.
- ☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
- ☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.
- ☒ (4) Impoundments of waters otherwise defined as waters of the US.
- ☒ (5) The presence of a tributary to a water identified in (1) - (4) above.
- ☒ (6) The presence of territorial seas.
- ☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination.* Project adjacent to Brownsville Ship Channel, a federally maintained channel for shipping.

FILE NUMBER: 24245

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- ☒ Ordinary High Water Mark indicated by:
- ☐ clear, natural line impressed on the bank
  - ☐ the presence of litter and debris
  - ☐ changes in the character of soil
  - ☐ destruction of terrestrial vegetation
  - ☐ shelving
  - ☐ other:
- ☒ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☒ physical markings/characteristics
  - ☐ tidal gages
  - ☐ other:

- ☒ Mean High Water Mark indicated by:
- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.

- ☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- ☒ The reviewed area consists entirely of uplands.
- ☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
  - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - ☐ Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☐ This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):
  - ☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☒ Data sheets prepared by the Corps.
- ☒ Corps' navigable waters' studies:
- ☒ U.S. Geological Survey Hydrologic Atlas:
- ☒ U.S. Geological Survey 7.5 Minute Topographic maps: East Brownsville
- ☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
- ☒ U.S. Geological Survey 15 Minute Historic quadrangles:
- ☒ USDA Natural Resources Conservation Service Soil Survey: Cameron County
- ☒ National wetlands inventory maps: East Brownsville
- ☒ State/Local wetland inventory maps:
- ☒ FEMA/FIRM maps (Map Name & Date): \_\_\_\_\_
- ☒ 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
- ☒ Aerial Photographs (Name & Date): \_\_\_\_\_
- ☒ Other photographs (Date): \_\_\_\_\_
- ☒ Advanced Identification Wetland maps:
- ☒ Site visit/determination conducted on: \_\_\_\_\_
- ☒ Applicable/supporting case law: \_\_\_\_\_
- ☒ Other information (please specify): \_\_\_\_\_

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

DISTRICT OFFICE: CESWG-PE-RC

FILE NUMBER: ~~D-18818~~ **D-18811**

**PROJECT LOCATION INFORMATION:**

State: TX

County: DeWitt

Center coordinates of site (latitude/longitude): 29° 05' 09"N, 97° 16' 42"W (NAD27)

Approximate size of area (parcel) reviewed, including uplands: acres.

Name of nearest waterway: Golhke Creek

Name of watershed:

**JURISDICTIONAL DETERMINATION**

Completed: Desktop determination

Site visit(s)



Date: 07/11/06

Date(s):

**Jurisdictional Determination (JD):**

☐ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☐ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:

☒ *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

☒ *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

☒ *There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.

☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

☒ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.

☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.

☒ (4) Impoundments of waters otherwise defined as waters of the US.

☒ (5) The presence of a tributary to a water identified in (1) - (4) above.

☒ (6) The presence of territorial seas.

☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:* There are not any waters present.

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)☒ Ordinary High Water Mark indicated by:

- ☐ clear, natural line impressed on the bank
- ☐ the presence of litter and debris
- ☐ changes in the character of soil
- ☐ destruction of terrestrial vegetation
- ☐ shelving
- ☐ other:

☒ High Tide Line indicated by:

- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gages
- ☐ other:

☒ Mean High Water Mark indicated by:

- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.

☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:**Basis For Not Asserting Jurisdiction:**☒ The reviewed area consists entirely of uplands.

Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).

☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).

The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:

- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
- ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
- ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
- ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
- ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
- ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
- ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
- ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
- ☐ Other (explain):

**DATA REVIEWED FOR JURSDICTIONAL DETERMINATION (mark all that apply):**☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.☒ Data sheets prepared/submitted by or on behalf of the applicant.

☐ This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):

☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):

☒ Data sheets prepared by the Corps.☒ Corps' navigable waters' studies:

☒ U.S. Geological Survey Hydrologic Atlas:

☒ U.S. Geological Survey 7.5 Minute Topographic maps:

☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:

☒ U.S. Geological Survey 15 Minute Historic quadrangles:

☒ USDA Natural Resources Conservation Service Soil Survey:

☒ National wetlands inventory maps:

☒ State/Local wetland inventory maps:

☒ FEMA/FIRM maps (Map Name & Date):

☒ 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)

☒ Aerial Photographs (Name & Date): 2004 & 1995

☒ Other photographs (Date):

☒ Advanced Identification Wetland maps:

☒ Site visit/determination conducted on:

☒ Applicable/supporting case law:

☒ Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.



**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** CESWG-PE-RC  
**FILE NUMBER:** D-18682

**PROJECT LOCATION INFORMATION:**

State: Texas  
County: Galveston  
Center coordinates of site (latitude/longitude): 29° 20' 10"N, 94° 45' 24"W & 29° 19' 48"N, 94° 43' 49"W  
(NAD27)  
Approximate size of area (parcel) reviewed, including uplands: acres.  
Name of nearest waterway: Gulf of Mexico & Houston/Galveston Ship Channel  
Name of watershed:

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination ☒ Date: 07-11-06  
Site visit(s) ☒ Date(s):

**Jurisdictional Determination (JD):**

- ☒ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☐ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).
- ☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:
- ☒ There are "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .
- ☒ There are "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .
- ☒ There are "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.  
☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

- ☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

- ☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- ☒ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.
- ☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
- ☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.
- ☒ (4) Impoundments of waters otherwise defined as waters of the US.
- ☒ (5) The presence of a tributary to a water identified in (1) - (4) above.
- ☒ (6) The presence of territorial seas.
- ☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:* The Houston Ship Channel and the Gulf of Mexico are navigable waters.

FILE NUMBER: D-18682

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)☒ Ordinary High Water Mark indicated by:

- ☐ clear, natural line impressed on the bank
- ☐ the presence of litter and debris
- ☐ changes in the character of soil
- ☐ destruction of terrestrial vegetation
- ☐ shelving
- ☐ other:

☒ High Tide Line indicated by:

- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gages
- ☐ other:

☒ Mean High Water Mark indicated by:

- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.

☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:**Basis For Not Asserting Jurisdiction:**☒ The reviewed area consists entirely of uplands.☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:

- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
- ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
- ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
- ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
- ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
- ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
- ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
- ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
- ☐ Other (explain): The project does involve activities in or affecting the waters.

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
  - ☐ This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):
  - ☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☒ Data sheets prepared by the Corps.
- ☒ Corps' navigable waters' studies:
  - ☒ U.S. Geological Survey Hydrologic Atlas:
  - ☒ U.S. Geological Survey 7.5 Minute Topographic maps:
  - ☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
  - ☒ U.S. Geological Survey 15 Minute Historic quadrangles:
  - ☒ USDA Natural Resources Conservation Service Soil Survey:
  - ☒ National wetlands inventory maps:
  - ☒ State/Local wetland inventory maps:
  - ☒ FEMA/FIRM maps (Map Name & Date):
  - ☒ 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
  - ☒ Aerial Photographs (Name & Date): 1995
  - ☒ Other photographs (Date):
  - ☒ Advanced Identification Wetland maps:
  - ☒ Site visit/determination conducted on:
  - ☒ Applicable/supporting case law:
  - ☒ Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** CESWG  
**FILE NUMBER:** D-18817

**PROJECT LOCATION INFORMATION:**

State: Texas  
County: Hardin  
Center coordinates of site (latitude/longitude): 30.4781N; 94.3681W  
Approximate size of area (parcel) reviewed, including uplands: 2 acres.  
Name of nearest waterway: Turkey Creek  
Name of watershed: Turkey Creek

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination ☒ Date: 11 July 2006  
Site visit(s) ☒ Date(s):

**Jurisdictional Determination (JD):**

☒ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☒ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:

☒ *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .

☒ *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .

☒ *There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.  
☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

☒ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.

☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.

☒ (4) Impoundments of waters otherwise defined as waters of the US.

☒ (5) The presence of a tributary to a water identified in (1) - (4) above.

☒ (6) The presence of territorial seas.

☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:*

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- ☒ Ordinary High Water Mark indicated by:
- ☐ clear, natural line impressed on the bank
  - ☐ the presence of litter and debris
  - ☐ changes in the character of soil
  - ☐ destruction of terrestrial vegetation
  - ☐ shelving
  - ☐ other:
- ☒ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☐ tidal gages
  - ☐ other:

☒ Mean High Water Mark indicated by:

- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.

☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:**Basis For Not Asserting Jurisdiction:**

- ☒ The reviewed area consists entirely of uplands.
- ☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
  - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - ☐ Other (explain):

**DATA REVIEWED FOR JURSDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☐ This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☒ Data sheets prepared by the Corps.
- ☒ Corps' navigable waters' studies:
- ☒ U.S. Geological Survey Hydrologic Atlas:
- ☒ U.S. Geological Survey 7.5 Minute Topographic maps:
- ☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
- ☒ U.S. Geological Survey 15 Minute Historic quadrangles:
- ☒ USDA Natural Resources Conservation Service Soil Survey:
- ☒ National wetlands inventory maps:
- ☒ State/Local wetland inventory maps:
- ☒ FEMA/FIRM maps (Map Name & Date):
- ☒ 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
- ☒ Aerial Photographs (Name & Date):
- ☒ Other photographs (Date):
- ☒ Advanced Identification Wetland maps:
- ☒ Site visit/determination conducted on:
- ☒ Applicable/supporting case law:
- ☒ Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** Galveston  
**FILE NUMBER:** D18393

**PROJECT LOCATION INFORMATION:**

State: Texas  
County: Harris  
Center coordinates of site (latitude/longitude): **29° 59' 54"N, 95° 40' 09"W**  
Approximate size of area (parcel) reviewed, including uplands: \_\_\_\_ acres.  
Name of nearest waterway: Little Cypress Creek  
Name of watershed: Spring Creek

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination ☒ Date: 7/11/06  
Site visit(s) ☒ Date(s): 4/27/06

**Jurisdictional Determination (JD):**

☐ Preliminary JD - Based on available information, ☐ there appear to be (or) ☐ there appear to be no "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:

☒ There are "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: \_\_\_\_.

☒ There are "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: \_\_\_\_ 1.5-acres \_\_\_\_.

☒ There are "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.

☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

☒ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.

☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.

☒ (4) Impoundments of waters otherwise defined as waters of the US.

☒ (5) The presence of a tributary to a water identified in (1) - (4) above.

☒ (6) The presence of territorial seas.

☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination: Wetlands adjacent to Little Cypress Creek which flows into Spring Creek and San Jacinto River, a navigable water of the United States.*

FILE NUMBER: D18393

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- ☒ Ordinary High Water Mark indicated by:
- ☒ clear, natural line impressed on the bank
  - ☐ the presence of litter and debris
  - ☐ changes in the character of soil
  - ☐ destruction of terrestrial vegetation
  - ☒ shelving
  - ☐ other:
- ☐ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☐ tidal gages
  - ☐ other:
- ☐ Mean High Water Mark indicated by:
- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.
- ☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by: Sendero Environmental, LLP

**Basis For Not Asserting Jurisdiction:**

- ☐ The reviewed area consists entirely of uplands.
- ☐ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☐ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☐ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
  - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - ☐ Other (explain):

**DATA REVIEWED FOR JURSDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☒ This office concurs with the delineation report, dated \_Nov 2005, May 2006 and July 2006 \_ prepared by (company): Sendero Environmental, LLP
- ☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☐ Data sheets prepared by the Corps.
- ☐ Corps' navigable waters' studies:
- ☐ U.S. Geological Survey Hydrologic Atlas:
- ☒ U.S. Geological Survey 7.5 Minute Topographic maps: Cypress and Rose Hill, Texas
- ☐ U.S. Geological Survey 7.5 Minute Historic quadrangles:
- ☐ U.S. Geological Survey 15 Minute Historic quadrangles:
- ☒ USDA Natural Resources Conservation Service Soil Survey: Harris County Soil Survey
- ☒ National wetlands inventory maps: Digitized 1998
- ☐ State/Local wetland inventory maps:
- ☒ FEMA/FIRM maps (Map Name & Date): FEMA FIRM 480305, Nov 19, 1996
- ☐ 100-year Floodplain Elevation is: (NGVD)
- ☒ Aerial Photographs (Name & Date): 1995 COLOR
- ☒ Other photographs (Date): Site photos in file
- ☐ Advanced Identification Wetland maps:
- ☒ Site visit/determination conducted on: April 27, 2006
- ☐ Applicable/supporting case law:
- ☐ Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/15/04

**DISTRICT OFFICE:** CESWG-PE-RC  
**FILE NUMBER:** I-2742/(01)

**PROJECT LOCATION INFORMATION:**

State: Texas  
County: Galveston  
Center coordinates of site (latitude/longitude): 29° 27' 57"N, 95° 00' 47"W  
Approximate size of area (parcel) reviewed, including uplands: Unknown  
Name of nearest waterway: Dickinson Bayou  
Name of watershed: Dickinson Bayou

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination ☒ Date: 12 July 2006  
Site visit(s) ☒ Date(s): 12 July 2006

**Jurisdictional Determination (JD):**

☒ Preliminary JD - Based on available information, ☐ there appear to be (or) ☐ there appear to be no "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:

☒ There are "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .

☒ There are "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

☒ There are "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.  
☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

☒ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.

☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.

☒ (4) Impoundments of waters otherwise defined as waters of the US.

☒ (5) The presence of a tributary to a water identified in (1) - (4) above.

☒ (6) The presence of territorial seas.

☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination: Review of the 2004 infrared aerial photo shows that the investigated area is located in Dickinson Bayou.*

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- ☒ Ordinary High Water Mark indicated by:
- ☐ clear, natural line impressed on the bank
  - ☐ the presence of litter and debris
  - ☐ changes in the character of soil
  - ☐ destruction of terrestrial vegetation
  - ☐ shelving
  - ☐ other:
- ☒ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☐ tidal gages
  - ☐ other:

- ☒ Mean High Water Mark indicated by:
- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.

- ☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- ☒ The reviewed area consists entirely of uplands.
- ☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
  - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - ☐ Other (explain):

**DATA REVIEWED FOR JURSDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☐ This office concurs with the delineation report, , prepared by (company):
  - ☐ This office does not concur with the delineation report, dated , prepared by (company):
- ☒ Data sheets prepared by the Corps.
- ☒ Corps' navigable waters' studies:
- ☒ U.S. Geological Survey Hydrologic Atlas:
  - ☒ U.S. Geological Survey 7.5 Minute Topographic maps: Dickinson, Tx
  - ☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
  - ☒ U.S. Geological Survey 15 Minute Historic quadrangles:
  - ☒ USDA Natural Resources Conservation Service Soil Survey:
  - ☒ National wetlands inventory maps: Dickinson, TX
  - ☒ State/Local wetland inventory maps:
  - ☒ FEMA/FIRM maps (Map Name & Date): Panel:
  - ☒ 100-year Floodplain Elevation is: (NGVD)
  - ☒ Aerial Photographs (Name & Date): Dickinson, TX DOQQ- 2004
  - ☒ Other photographs (Date):
  - ☒ Advanced Identification Wetland maps:
  - ☒ Site visit/determination conducted on: 12 July 2006
  - ☒ Applicable/supporting case law:
  - ☒ Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.



**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** CESWG-PE-RC  
**FILE NUMBER:** D-18710

**PROJECT LOCATION INFORMATION:**

State: Texas  
County: Montgomery County  
Center coordinates of site (latitude/longitude): 30° 18' 05"N, 95° 25' 20"W (NAD83)  
Approximate size of area (parcel) reviewed, including uplands: 216 acres.  
Name of nearest waterway: Little Caney Creek  
Name of watershed: West Fork San Jacinto

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination ☒ Date: 12 July 2006  
Site visit(s) ☒ Date(s): 29 June 2006

**Jurisdictional Determination (JD):**

☐ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☐ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:

☒ *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: \_\_\_\_\_.

☒ *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 2.009 acres.

☒ *There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.  
☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

☒ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.

☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.

☒ (4) Impoundments of waters otherwise defined as waters of the US.

☒ (5) The presence of a tributary to a water identified in (1) - (4) above.

☒ (6) The presence of territorial seas.

☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:* The wetlands are adjacent to Little Caney Creek. Little Caney Creek is a tributary of West Fork San Jacinto River. The West Fork is a tributary of the San Jacinto River, which is a navigable water of the United States that is presently used or has been used in the past, or may be susceptible to use to transport interstate or foreign commerce.

FILE NUMBER: D-18710

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- ☒ Ordinary High Water Mark indicated by:
- ☒ clear, natural line impressed on the bank
  - ☐ the presence of litter and debris
  - ☐ changes in the character of soil
  - ☐ destruction of terrestrial vegetation
  - ☐ shelving
  - ☐ other:
- ☒ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☐ tidal gages
  - ☐ other:
- ☒ Mean High Water Mark indicated by:
- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.
- ☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:  
Berg-Oliver associates, Inc.

**Basis For Not Asserting Jurisdiction:**

- ☒ The reviewed area consists entirely of uplands.
- ☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - ☒ Isolated, intrastate wetland with no nexus to interstate commerce.
  - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - ☐ Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☒ This office concurs with the delineation report, dated 28 April 2006, prepared by (company): Berg-Oliver associates, Inc.
- ☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☒ Data sheets prepared by the Corps.
- ☒ Corps' navigable waters' studies:
- ☒ U.S. Geological Survey Hydrologic Atlas:
  - ☒ U.S. Geological Survey 7.5 Minute Topographic maps: 1976 Conroe, Tx.
  - ☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
  - ☒ U.S. Geological Survey 15 Minute Historic quadrangles:
  - ☒ USDA Natural Resources Conservation Service Soil Survey:
  - ☒ National wetlands inventory maps:
  - ☒ State/Local wetland inventory maps:
  - ☒ FEMA/FIRM maps (Map Name & Date): Montgomery County, Texas Panel 391 of 750, Effective 19 December 1996.
  - ☒ 100-year Floodplain Elevation is: (NGVD)
  - ☒ Aerial Photographs (Name & Date): 1995 and 2004 DOQQ Conroe, Tx.
  - ☒ Other photographs (Date):
  - ☒ Advanced Identification Wetland maps:
  - ☒ Site visit/determination conducted on: 29 June 2006
  - ☒ Applicable/supporting case law:
  - ☒ Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** CESWG  
**FILE NUMBER:** 24221

**PROJECT LOCATION INFORMATION:**

State: Texas  
County: Polk  
Center coordinates of site (latitude/longitude): Lat: 30.44. 25 Long: 95.03.56  
Approximate size of area (parcel) reviewed, including uplands: 1 acres.  
Name of nearest waterway: Lake Livingston  
Name of watershed: Trinity River

**JURISDICTIONAL DETERMINATION**

Completed: Desktop determination ☒ Date: 13 July 2006  
Site visit(s) ☒ Date(s):

**Jurisdictional Determination (JD):**

☒ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☐ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:

☒ *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

☒ *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

☒ *There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.  
☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

☒ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.

☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.

☒ (4) Impoundments of waters otherwise defined as waters of the US.

☒ (5) The presence of a tributary to a water identified in (1) – (4) above.

☒ (6) The presence of territorial seas.

☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:*

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- ☒ Ordinary High Water Mark indicated by:
- ☐ clear, natural line impressed on the bank
  - ☐ the presence of litter and debris
  - ☐ changes in the character of soil
  - ☐ destruction of terrestrial vegetation
  - ☐ shelving
  - ☐ other:
- ☒ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☐ tidal gages
  - ☐ other:
- ☒ Mean High Water Mark indicated by:
- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.
- ☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- ☒ The reviewed area consists entirely of uplands.
- ☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
  - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - ☐ Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☐ This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):
  - ☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☒ Data sheets prepared by the Corps.
- ☒ Corps' navigable waters' studies:
- ☒ U.S. Geological Survey Hydrologic Atlas:
  - ☒ U.S. Geological Survey 7.5 Minute Topographic maps: Blanchard
  - ☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
  - ☒ U.S. Geological Survey 15 Minute Historic quadrangles:
  - ☒ USDA Natural Resources Conservation Service Soil Survey:
  - ☒ National wetlands inventory maps:
  - ☒ State/Local wetland inventory maps:
  - ☒ FEMA/FIRM maps (Map Name & Date):
  - ☒ 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
  - ☒ Aerial Photographs (Name & Date):
  - ☒ Other photographs (Date):
  - ☒ Advanced Identification Wetland maps:
  - ☒ Site visit/determination conducted on:
  - ☒ Applicable/supporting case law:
  - ☒ Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** CESWG  
**FILE NUMBER:** D-18507 - Site 1

**PROJECT LOCATION INFORMATION:**

State: Texas  
County: Harris  
Center coordinates of site (latitude/longitude): Lat: 29-42-29.52 N Long: 95-33-59.04 W  
Approximate size of area (parcel) reviewed, including uplands: 3 acres.  
Name of nearest waterway: Brays Bayou  
Name of watershed: Buffalo Bayou/San Jacinto River

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination      Date: 13 July 2006  
Site visit(s)      Date(s):

**Jurisdictional Determination (JD):**

☒ Preliminary JD - Based on available information, ☐ there appear to be (or) ☐ there appear to be no "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:

☒ There are "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

☒ There are "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 0.12 acre.

☒ There are "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.  
☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

- ☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- ☒ (2) The presence of interstate waters including interstate wetlands.
- ☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
- ☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.
- ☒ (4) Impoundments of waters otherwise defined as waters of the US.
- ☒ (5) The presence of a tributary to a water identified in (1) - (4) above.
- ☒ (6) The presence of territorial seas.
- ☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:*

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- ☒ Ordinary High Water Mark indicated by:
- ☐ clear, natural line impressed on the bank
  - ☐ the presence of litter and debris
  - ☐ changes in the character of soil
  - ☐ destruction of terrestrial vegetation
  - ☐ shelving
  - ☐ other:
- ☒ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☐ tidal gages
  - ☐ other:

- ☒ Mean High Water Mark indicated by:
- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.

- ☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- ☒ The reviewed area consists entirely of uplands.
- ☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
  - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - ☐ Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☐ This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):
  - ☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☒ Data sheets prepared by the Corps.
- ☒ Corps' navigable waters' studies:
- ☒ U.S. Geological Survey Hydrologic Atlas:
  - ☒ U.S. Geological Survey 7.5 Minute Topographic maps: Alief, Tex. 1995
  - ☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
  - ☒ U.S. Geological Survey 15 Minute Historic quadrangles:
  - ☒ USDA Natural Resources Conservation Service Soil Survey:
  - ☒ National wetlands inventory maps:
  - ☒ State/Local wetland inventory maps:
  - ☒ FEMA/FIRM maps (Map Name & Date): Harris County Panel 830 of 1135 dated 20 April 2000
  - ☒ 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
  - ☒ Aerial Photographs (Name & Date): True color
  - ☒ Other photographs (Date):
  - ☒ Advanced Identification Wetland maps:
  - ☒ Site visit/determination conducted on:
  - ☒ Applicable/supporting case law:
  - ☒ Other information (please specify): Site photos

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

DISTRICT OFFICE: CESWG  
FILE NUMBER: D-18507 - *Site 2*

**PROJECT LOCATION INFORMATION:**

State: Texas  
County: Harris  
Center coordinates of site (latitude/longitude): Lat: 29-36-11.88 N Long: 95-14-16.08 W  
Approximate size of area (parcel) reviewed, including uplands: 3 acres.  
Name of nearest waterway: Turkey Creek  
Name of watershed: Buffalo Bayou/San Jacinto River

**JURISDICTIONAL DETERMINATION**

Completed: Desktop determination      Date: 13 July 2006  
Site visit(s)      Date(s):

**Jurisdictional Determination (JD):**

☒ Preliminary JD - Based on available information, ☐ there appear to be (or) ☐ there appear to be no "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:

☒ There are "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

☒ There are "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 0.12 acre.

☒ There are "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.  
☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

☒ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.

☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.

☒ (4) Impoundments of waters otherwise defined as waters of the US.

☒ (5) The presence of a tributary to a water identified in (1) - (4) above.

☒ (6) The presence of territorial seas.

☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:*

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)☒ Ordinary High Water Mark indicated by:

- ☐ clear, natural line impressed on the bank
- ☐ the presence of litter and debris
- ☐ changes in the character of soil
- ☐ destruction of terrestrial vegetation
- ☐ shelving
- ☐ other:

☒ High Tide Line indicated by:

- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gages
- ☐ other:

☒ Mean High Water Mark indicated by:

- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.

☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:**Basis For Not Asserting Jurisdiction:**☒ The reviewed area consists entirely of uplands.☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:

- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
- ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
- ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
- ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
- ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
- ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
- ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
- ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
- ☐ Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.☒ Data sheets prepared/submitted by or on behalf of the applicant.

☐ This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):

☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):

☒ Data sheets prepared by the Corps.☒ Corps' navigable waters' studies:☒ U.S. Geological Survey Hydrologic Atlas:☒ U.S. Geological Survey 7.5 Minute Topographic maps: Friendswood, Tex. 1995, 1932, 1982☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:☒ U.S. Geological Survey 15 Minute Historic quadrangles:☒ USDA Natural Resources Conservation Service Soil Survey:☒ National wetlands inventory maps:☒ State/Local wetland inventory maps:☒ FEMA/FIRM maps (Map Name & Date): Harris County Panel 1055 of 1135 dated 20 April 2000☒ 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)☒ Aerial Photographs (Name & Date): True color☒ Other photographs (Date):☒ Advanced Identification Wetland maps:☒ Site visit/determination conducted on:☒ Applicable/supporting case law:☒ Other information (please specify): Site photos

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.



**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

~~5-10~~

DISTRICT OFFICE: CESWG  
FILE NUMBER: D-18507 ~ *Site 3*

**PROJECT LOCATION INFORMATION:**

State: Texas  
County: Harris  
Center coordinates of site (latitude/longitude): Lat: 29-42-33.48 N Long: 95-15-29.16 W  
Approximate size of area (parcel) reviewed, including uplands: 3 acres.  
Name of nearest waterway: Sims Bayou  
Name of watershed: Buffalo Bayou/San Jacinto River

**JURISDICTIONAL DETERMINATION**

Completed: Desktop determination      Date: 13 July 2006  
                  Site visit(s)                      Date(s):

**Jurisdictional Determination (JD):**

☒ Preliminary JD - Based on available information, ☐ there appear to be (or) ☐ there appear to be no "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:

☒ There are "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .

☒ There are "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 0.12 acre.

☒ There are "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.  
☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

☒ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.

☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.

☒ (4) Impoundments of waters otherwise defined as waters of the US.

☒ (5) The presence of a tributary to a water identified in (1) - (4) above.

☒ (6) The presence of territorial seas.

☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:*

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)☒ Ordinary High Water Mark indicated by:

- ☐ clear, natural line impressed on the bank
- ☐ the presence of litter and debris
- ☐ changes in the character of soil
- ☐ destruction of terrestrial vegetation
- ☐ shelving
- ☐ other:

☒ High Tide Line indicated by:

- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gages
- ☐ other:

☒ Mean High Water Mark indicated by:

- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.

☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:**Basis For Not Asserting Jurisdiction:**☒ The reviewed area consists entirely of uplands.☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:

- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
- ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
- ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
- ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
- ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
- ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
- ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
- ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
- ☐ Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.☒ Data sheets prepared/submitted by or on behalf of the applicant.

☐ This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):

☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):

☒ Data sheets prepared by the Corps.☒ Corps' navigable waters' studies:☒ U.S. Geological Survey Hydrologic Atlas:☒ U.S. Geological Survey 7.5 Minute Topographic maps: Park Place, Tex. 1995☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:☒ U.S. Geological Survey 15 Minute Historic quadrangles:☒ USDA Natural Resources Conservation Service Soil Survey:☒ National wetlands inventory maps:☒ State/Local wetland inventory maps:☒ FEMA/FIRM maps (Map Name & Date): Harris County Panel 885 of 1135 dated 20 April 2000☒ 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)☒ Aerial Photographs (Name & Date): True color☒ Other photographs (Date):☒ Advanced Identification Wetland maps:☒ Site visit/determination conducted on:☒ Applicable/supporting case law:☒ Other information (please specify): Site photos

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** CESWG-PE-RE  
**FILE NUMBER:** 23354(02)

**PROJECT LOCATION INFORMATION:**

State: Texas  
County: Matagorda  
Center coordinates of site (latitude/longitude): Latitude 28° 36' 46"N; Longitude 95° 56' 55"W  
Approximate size of area (parcel) reviewed, including uplands: acres.  
Name of nearest waterway: Matagorda Bay  
Name of watershed: Lower Colorado Huc: 12090302

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination ☒ Date: 14 July 2006  
Site visit(s) ☐ Date(s):

**Jurisdictional Determination (JD):**

☒ Preliminary JD - Based on available information, ☒ *there appear to be* (or) ☐ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☐ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:

☐ *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .

☐ *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .

☐ *There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.  
☐ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

☐ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.

☐ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.

☐ (4) Impoundments of waters otherwise defined as waters of the US.

☐ (5) The presence of a tributary to a water identified in (1) - (4) above.

☐ (6) The presence of territorial seas.

☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:* The wetlands contiguous with Matagorda Bay, a navigable water of the United States subject to the ebb and flow of the daily tide. These adjacent wetlands are subject to the ebb and flow of the daily tide and are therefore navigable. As such, these adjacent wetlands are subject to Section 10 of the Rivers and Harbors Act of 1899 (Section 10) as well as Section 404. Section 10 regulates work and/or structures in navigable waters and/or waters that are subject to the ebb and flow of the daily tide.

FILE NUMBER: 23354(02)

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- ☐ Ordinary High Water Mark indicated by:
- ☐ clear, natural line impressed on the bank
  - ☐ the presence of litter and debris
  - ☐ changes in the character of soil
  - ☐ destruction of terrestrial vegetation
  - ☐ shelving
  - ☐ other:
- ☐ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☐ tidal gages
  - ☐ other:

- ☐ Mean High Water Mark indicated by:
- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.

- ☐ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- ☐ The reviewed area consists entirely of uplands.
- ☐ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☐ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☐ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
  - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - ☐ Other (explain):

**DATA REVIEWED FOR JURSDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☐ Data sheets prepared/submitted by or on behalf of the applicant.
- ☐ This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):
  - ☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☐ Data sheets prepared by the Corps.
- ☒ Corps' navigable waters' studies:
- ☐ U.S. Geological Survey Hydrologic Atlas:
- ☒ U.S. Geological Survey 7.5 Minute Topographic maps: Matagorda SW, Texas
- ☐ U.S. Geological Survey 7.5 Minute Historic quadrangles:
- ☐ U.S. Geological Survey 15 Minute Historic quadrangles:
- ☐ USDA Natural Resources Conservation Service Soil Survey:
- ☐ National wetlands inventory maps:
- ☐ State/Local wetland inventory maps:
- ☐ FEMA/FIRM maps (Map Name & Date):
- ☐ 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
- ☐ Aerial Photographs (Name & Date):
- ☐ Other photographs (Date):
- ☐ Advanced Identification Wetland maps:
- ☐ Site visit/determination conducted on:
- ☐ Applicable/supporting case law:
- ☐ Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** CESWG-PE-RC  
**FILE NUMBER:** D-18454

**PROJECT LOCATION INFORMATION:**

State: Texas  
County: Jefferson County  
Center coordinates of site (latitude/longitude): 29° 46' 03"N, 93° 54' 27"W (NAD83)  
Approximate size of area (parcel) reviewed, including uplands: 2.3 acres.  
Name of nearest waterway: Sabine Lake  
Name of watershed: Sabine Lake

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination  
Site visit(s)



Date: 14 July 2006  
Date(s): 11 July 2006

**Jurisdictional Determination (JD):**

☒ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☐ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:

☒ *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 0.1.

☒ *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 1.0.

☒ *There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.

☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

☒ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

☒ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

☒ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.

☒ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

- ☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.  
☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.  
☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.

☒ (4) Impoundments of waters otherwise defined as waters of the US.

☒ (5) The presence of a tributary to a water identified in (1) - (4) above.

☒ (6) The presence of territorial seas.

☒ (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:* The wetlands at the project site are contiguous with Sabine Lake. They are influenced by the daily tide at the area closest to the lake. Sabine Lake is a navigable water of the United States influenced by the daily tide.

FILE NUMBER: D-18454

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- ☒ Ordinary High Water Mark indicated by:
- ☐ clear, natural line impressed on the bank
  - ☐ the presence of litter and debris
  - ☐ changes in the character of soil
  - ☐ destruction of terrestrial vegetation
  - ☐ shelving
  - ☐ other:
- ☒ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☐ tidal gages
  - ☐ other:

☒ Mean High Water Mark indicated by:

- ☒ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.

- ☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:  
Exact boundaries are unknown at this time.

**Basis For Not Asserting Jurisdiction:**

- ☒ The reviewed area consists entirely of uplands.
- ☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
  - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - ☐ Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☐ This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☐ This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- ☒ Data sheets prepared by the Corps.
- Corps' navigable waters' studies:
- ☒ U.S. Geological Survey Hydrologic Atlas:
- ☒ U.S. Geological Survey 7.5 Minute Topographic maps: 199 Port Arthur South, Tx.
- ☒ U.S. Geological Survey 7.5 Minute Historic quadrangles:
- ☒ U.S. Geological Survey 15 Minute Historic quadrangles:
- ☒ USDA Natural Resources Conservation Service Soil Survey:
- National wetlands inventory maps:
- State/Local wetland inventory maps:
- FEMA/FIRM maps (Map Name & Date):
- 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
- ☒ Aerial Photographs (Name & Date): 2004 Port Arthur South, Tx. DOQQ
- Other photographs (Date):
- Advanced Identification Wetland maps:
- ☒ Site visit/determination conducted on: 11 July 2006
- Applicable/supporting case law:
- ☒ Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.